

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ERIC GILBERT,

CASE NO. 2:25-cv-00568-JHC

Plaintiff,

ORDER DENYING PLAINTIFF'S EX
PARTE MOTION FOR EXPEDITED
DISCOVERY

V.

NORDSTROM, INC. ET AL.,

Defendants.

I INTRODUCTION

This matter comes before the Court on Plaintiff's Ex Parte Motion for Expedited Discovery Ahead of Setting of Merger Vote. Dkt. # 23. Plaintiff Eric Gilbert asks the Court to grant expedited discovery to help determine whether to seek to preliminarily enjoin a May 16, 2025, vote by shareholders of Defendant Nordstrom, Inc., on a merger agreement. The agreement would allow Defendants Nordstrom family members and El Puerto de Liverpool, S.A.B. de C.V. (Liverpool) to acquire all outstanding common shares of Nordstrom. *Id.* at 2. The Court has reviewed the materials filed in support of and in opposition to the motion, the record, and the governing law. Being fully advised, the Court DENIES the motion.

1

II
BACKGROUND

2 In 2023, Defendants Erik and Peter Nordstrom (Nordstrom Brothers), both officers of
 3 Nordstrom and members of its Board of Directors, supported a review of potential strategic
 4 alternatives for Nordstrom that included a sale of the company. Dkt. # 1 at 4–5, 10, ¶¶ 8–9, 39.
 5 In February 2024, the Nordstrom Brothers told the Board that they, along with other Nordstrom
 6 family members and Liverpool, might be interested in a take-private transaction. Dkt. # 41 at 4
 7 (citing Dkt. # 1 at 13, ¶ 50 (redacted)). That month, the Board formed a Special Committee
 8 consisting of three disinterested and independent directors that oversaw the possibility of such a
 9 transaction. *Id.* at 4–5 (citing Dkt. # 1 at 13–14, 18–28, ¶¶ 54–55, 69–104 (redacted)). On
 10 September 3, 2024, the Board approved by unanimous consent a buyer group for such a
 11 transaction consisting of Nordstrom family members and Liverpool. *Id.* at 5 (citing Dkt. # 1 at
 12 22, 28, ¶¶ 85, 105 (redacted)). On December 22, 2024, Nordstrom entered into a merger
 13 agreement under which Nordstrom family members and Liverpool would acquire all outstanding
 14 common shares of Nordstrom. *Id.*

15 On January 9, 2025, Plaintiff, a common stockholder of Nordstrom, requested inspection
 16 of Nordstrom’s corporate books and records to investigate an alleged violation of the
 17 Washington Business Corporations Act’s Anti-Takeover Statute, RCW 23B.19.040. *Id.*; Dkt.
 18 # 23 at 2 n.2. On February 28, 2025, Defendants produced books and records “largely consisting
 19 of confidential Board and Special Committee minutes related to the [merger].” Dkt. # 41 at 6.
 20 After inspecting these documents, Plaintiff believed that the proposed merger violates the Anti-
 21 Takeover Statute because it “is not subject to the approval of stockholders holding two-thirds of
 22 the Company’s shares *excluding* the Buyer Group [i.e., the Nordstrom family members and
 23

1 Liverpool].” Dkt. # 23 at 2. On March 4, 2025, Nordstrom filed a preliminary proxy statement
 2 about the merger. Dkt. # 41 at 5 n.3 (providing link), 6.

3 On March 31, 2025, Plaintiff filed a class action complaint against Defendants alleging
 4 violation of the Anti-Takeover Statute and breach of fiduciary duties. Dkt. # 1. On April 3,
 5 2025, Nordstrom’s counsel told Plaintiff that Nordstrom will likely hold a shareholder vote on
 6 the merger in May 2025. Dkt. # 41 at 6. The next day, Plaintiff filed the present motion, and the
 7 Court granted it in part as to its request for an expedited briefing schedule. Dkt. ## 23; 26.
 8 Plaintiff seeks expedited discovery of “documents and communications concerning the
 9 September 3 Proposal . . . and the Anti-Takeover Statute from June 1, 2024 to September 11,
 10 2024” to determine whether to move for a preliminary injunction enjoining the shareholder vote.
 11 Dkt. # 23 at 3. Plaintiff asks the Court to order Defendants to respond to his expedited discovery
 12 requests within ten days of the Court’s ruling on his motion. *Id.*

13 **III**
 14 **DISCUSSION**

15 Plaintiff’s theory that the merger would violate the Anti-Takeover Statute is based on
 16 timing. Plaintiff says, “The Anti-Takeover Statute places strict limits on transactions between a
 17 Washington corporation and an ‘acquiring person’ for a period of five years after the acquiring
 18 person acquires 10% of the Company’s outstanding stock.” *Id.* at 3 (citing Dkt. # 1 at 14–15,
 19 ¶¶ 58–60). During those five years, a corporation cannot engage in a merger unless it is
 20 “approved (a) by the board of directors *prior to* the acquiring person’s share acquisition time; or
 21 (b) by the affirmative vote of two-thirds of the Company’s outstanding shares *excluding* the
 22 votes of the acquiring person.” *Id.* And under the statute, a person “owns” shares with another
 23 person if they have an applicable “agreement, arrangement or understanding” (AAU). *Id.*
 24 Because the Nordstrom family members and Liverpool (collectively buyer group) own 43% of

1 Nordstrom's stock, Plaintiff says that the merger triggers the Anti-Takeover Statute's pre-
 2 approval requirement. *Id.* at 3–4. Plaintiff asserts that the Board's September 3, 2024 approval
 3 of the buyer group's formation does not satisfy this requirement because such approval was
 4 made *after* the buyer group had acquired more than 10% of Nordstrom's outstanding stock by
 5 reaching an AAU. *Id.* at 4 (citing Dkt. # 1 at 15–16, 28 ¶¶ 61, 104 (redacted)). Plaintiff thus
 6 contends that the merger "violates the Anti-Takeover Statute because it is not conditioned on the
 7 approval of holders of two-thirds of the Company's outstanding shares, *excluding* the Buyer
 8 Group's shares." *Id.* Defendants do not challenge this characterization of the Anti-Takeover
 9 Statute but contend that Plaintiff's theory conflicts with legislative intent and that no court has
 10 applied the statute.¹ Dkt. # 41 at 7–10.

11 Plaintiff requests expedited discovery that "will be principally focused on confirming that
 12 members of the Nordstrom Family and Liverpool reached an AAU *prior to* Board approval on
 13 September 3, 2024." Dkt. # 23 at 5–6. The Court may allow discovery before a conference
 14 under Federal Rule of Civil Procedure 26(f) upon a showing of "good cause." *Fluke Elecs.*
 15 *Corp. v. CorDEX Instruments, Inc.*, 2013 WL 566949, at *10 (W.D. Wash. Feb. 13, 2013). "In
 16 considering whether good cause exists, factors courts may consider include (1) whether a
 17 preliminary injunction is pending; (2) the breadth of the discovery request; (3) the purpose for
 18 requesting the expedited discovery; (4) the burden on the defendants to comply with the requests;
 19 and (5) how far in advance of the typical discovery process the request was made." *Id.*
 20 (quotation marks and citation omitted).

21 Plaintiff has not shown good cause for expedited discovery. Plaintiff does not respond to
 22 Defendants' assertion that if "Plaintiff moves for an injunction, the Court will be presented
 23

24 ¹ The Court recognizes that Defendants had a one-day turnaround to file their expedited response
 brief and that Defendants may later challenge Plaintiff's characterization of the Anti-Takeover Statute.

1 primarily with a legal issue" of interpreting the Anti-Takeover Statute, which Plaintiff
 2 acknowledges is one of first impression. Dkt. ## 41 at 3; 45 at 5. Without fuller briefing on this
 3 issue, the Court cannot conclude whether expedited discovery is warranted. And in any event,
 4 Plaintiff acknowledges that evidence from Nordstrom's production in response to his books and
 5 records request supports his allegations of AAUs between the Nordstrom Brothers and
 6 Liverpool. Dkt. # 45 at 3, 5. He still says that he needs expedited discovery of "documents
 7 showing the contemporaneous communications of the Nordstrom Brothers and Liverpool." *Id.* at
 8 5. But without more specificity, it is unclear what these documents would show that
 9 Nordstrom's books and records production and preliminary proxy statement do not. Plaintiff
 10 also only makes conclusory statements that his expedited discovery requests are "narrowly
 11 tailored" and that any burden would be outweighed "by the interest in ensuring the \$6.25 billion
 12 merger meets the Anti-Takeover Statute's requirements." *Id.* at 6. These generalized statements
 13 do not show good cause.

14 **IV**
 15 **CONCLUSION**

16 For these reasons, the Court DENIES Plaintiff's ex parte motion for expedited discovery.
 17 The Court sets the following briefing schedule for a motion for preliminary injunction, should
 Plaintiff file one:

Deadline for Plaintiff to file a motion for a preliminary injunction	April 18, 2025
Deadline for Defendants to respond	April 25, 2025
Deadline for Plaintiff to file a reply	April 29, 2025

1 Dated this 11th day of April, 2025.
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John H. Chun
United States District Judge